

04.05.2023
Sl. No.116(ML)
srm

W.P.A. No. 19059 of 2022

Birat Halder & Ors.

Versus

The State of West Bengal & Ors.

Mr. Subhendu Banerjee

....for the Petitioners.

Mr. Sudipto Panda,
Mrs. Munmun Tewary

...for the State-respondents.

Despite service, none appears on behalf of the respondent Nos.5 to 9 as also the panchayat authorities. Affidavit-of-service is taken on record.

The Court is not inclined to pass mandatory directions as prayed for, but deems it fit to send back the matter before the competent authority, for necessary steps. Thus, the writ petition is taken up in the absence of the respondent Nos.5 to 9, who will be given adequate opportunity of hearing by the said authority.

The petitioners allege that the respondent Nos.5 to 9 have raised a construction on an undivided land being RS Dag Nos.1172, 1174, 1178, 1179 and 1180 of mouza Nimpith, without any permission from the panchayat authorities.

The contentions of construction over an undivided land and encroachment into the portion belonging to the petitioners, cannot be decided by this Court. The panchayat authorities are also not empowered by law to enter into the question of title, possession and encroachment.

However, the allegations of unauthorised construction and construction in violation of the building rules must be determined by the panchayat authorities in terms of Section 23(5) of the West Bengal Panchayat Act, 1973.

The petitioners have approached the Futigoda Gram Panchayat, South 24-Parganas, by filing a representation dated July 25, 2022, which is annexure P4 at page 28 of the writ petition.

Under such circumstances, the writ petition is disposed of with a direction upon the Futigoda Gram Panchayat, South 24-Parganas to dispose of the representation of the petitioners, in accordance with law.

While doing so, the permission granting authority shall adhere to the following procedure:-

- a) An inspection of the site shall be conducted. Such inspection shall be held in the presence of the petitioners and the respondent Nos.5 to 9, with 48

hours advance notice to the petitioners and the respondent Nos.5 to 9.

- b) A report of the inspection shall be prepared along with the sketch map, indicating the extent of unauthorized construction, if any.
- c) Such report shall be handed over to the petitioners as also the respondent Nos.5 to 9.
- d) In case, it is found on preliminary inspection, that there may be reasons to believe that the construction was without permission as also in violation of the building rules and had been continuing, the authorities may take interim measures by stopping such construction.
- e) A hearing shall be given to all the parties. The parties must also be allowed to furnish their written objection/version to the said report and adduce oral and documentary evidence in support of their contentions, before the competent authority.
- f) A reasoned order shall be passed and communicated to the parties. On the basis of what transpires at the hearing and during inspection, the proceedings shall be reached to its logical conclusion in terms of the provisions of Section 23(5) of the West Bengal Panchayat Act, 1973.

g) After the entire process is over and if the unauthorised construction is detected, the same shall be demolished in accordance with law.

The entire exercise shall be completed within a period of four months from the date of communication of this order.

The questions of right, title, interest, encroachment, etc. shall not be gone into.

The Court has not gone into the merits of the claims of the petitioners and the issues raised, shall be decided by the competent authority, independently.

A copy of the writ petition, along with a server copy of this order be served upon the Secretary, Futigoda Gram Panchayat, South 24-Parganas.

The writ petition is, thus, disposed of.

There shall be no order as to costs.

Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)